Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

YUNHONG DING, individually and as next friend of SHIYANG DING, a minor and DANIEL SHIWEN DING, a minor,

Petitioners,

v.

JOHN ENGLER, JENNIFER MULHERN GRANHOLM, CANDICE S. MILLER, NANETTE LEE REYNOLDS, RODGER JAMES, DAVID KILGREN, WALT CURTIS, ANN TEAR ALLEN,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Petitioners alleged that State of Michigan officials respondents intentionally and deliberately turned the investigation of petitioners' automotive consumer complaint into harming, torturing and wrecking petitioners, and turned petitioners' lives into a hellish and torturous experience. The question presented is whether the Court of Appeals erred in affirming that the district court granted respondents' motion to dismiss petitioners' claims under Fed. R. Civ.P.12 (b)(6) and 56(c), for not only refusing to accept petitioners' factual allegations, but also imposing a false allegation on the petitioner.

2. As foreigners and without the assistance of counsel, and having pled sufficient specific facts to state claims, whether the rights of this Chinese family and persons similarly situated under the Equal Protection Clause of the Fourteenth Amendment, 42 U.S.C.§§ 1981, 1983,1985 and 1986 and State law should be vindicated in the United States.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), petitioner Yunhong Ding, individually and as next friend of petitioners Shiyand Ding, and Daniel Shiwen Ding, states that there was no parties in the court of appeals who are not parties in this court. In the trial court, all respondents were sued in their individual capacity. The motion to dismiss was filed only by respondents John Engler, Jennifer Granholm, Candice Miller and Nanette Reynolds. The other respondents Rodger James, David Kilgren, Walt Curtis, and Ann Tear Allen did not appear in the action in the trial court. The trial court granted the judgment to all respondents to dismiss petitioners' complaint.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 17

1. As foreigners and without the assistance of counsel, petitioners' complaint has satisfied the requirements to survive a rule12(b)(6) dismissal motion 17

2 The Court of Appeals erred in affirming that the district court granted respondents' motion to dismiss petitioners' claims under Fed. R. Civ. P. 12(b)(6) and 56(c), for not only refusing to accept petitioners' factual allegations, but also imposing a false allegation on petitioner 22

3. The low courts' decisions in the instant case, if allowed to stand, will create a chilling and harmful precedent and tell this Chinese family and persons similarly situated that there is no way to get their rights vindicated in United States 29

CONCLUSION 30

APPENDIX

Appendix A
Sixth Circuit Order denying rehearing - 4/24/03 . . . . . 1a

Appendix B
Sixth Circuit Order - 1/29/03 . . . . . 3a

Appendix C
District Court Order, Judgment and Opinion - 6/20/02 . . . . . 8a

TABLE OF AUTHORITIES

Page(s)

Cases:

Brooks v. American Broadcasting Cos,
932 F2d 495 (6th Cir. 1991) 223

Collins v. Nagle, 892 F.2d 489 (6th Cir. 1989) 29

Conley v. Gibson, 355 U.S. 41 (1957) 22

Duran v. The Detroit News, Inc.,
200 Mich. App. 622 (1993) 22

Jenkins v. Mckeithen, 395 U.S. 411 (1969) 18, 29

Leatherman v. Tarrant County Narcotics
Intelligence and Coordination Unit,
507 U.S. 163 (1993) 17

Morgan v. Church's Fried Chicken,
829 F.2d 10 (6th Cir.1987) 29

Roberts v. Auto-Owners Ins. Cos.,
422 Mich. 594 (1985) 22

Scheuer v. Rhodes, 416 U.S. 232 (1973) 23, 29

Constitution and Statutes:

28 U.S.C. § 1254(1) 1

42 U.S.C. §§ 1981,1983,1985 and 1986 . . . . . *passim*

Fed. R. Civ. P. 8(a) 17

Fed. R. Civ. P.12(b)(6) . . . . . *passim*

Fed. R. Civ. P.56 (c) . . . . . *passim*

Constitution of Michigan of 1963 ARTICLE I § 17 . . . 18

Michigan Compulsory Law (MCL) 257.1 18

U.S. CONST. Amend. XIV . . . . . *passim*

Petitioners respectfully pray that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the Court of Appeals (Appendix B, pp. 3a-7a) is unreported. The order denying rehearing (Appendix A, pp. 1a-2a) is unreported. The district court's opinion granting in respondents' motion to dismiss (Appendix C, pp. 8a-20a) is unreported.

JURISDICTION

The Court of Appeals' judgment was entered on January 29, 2003, and rehearing was denied on April 24, 2003 (Appendix A and B). The petition for writ of certiorari is timely filed now. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in part: "No State shall *** deny to any person within its jurisdiction the equal protection of the laws." 42 U.S.C. § 1983 provides in part: " Every person who, under color of any statue, ordinance, regulation, custom, or usage, of any State *** subjects or cause to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law *** " 42 U.S.C. § 1985(3) provides in part: " If two or more persons in any State or Territory conspire *** for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, *** or to injure any citizen in person or *** ; in any case of conspiracy set forth in this section, if one or more persons

engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States *** " 42 U.S.C. § 1981 provides in part: " All persons within the jurisdiction of the United States shall have the same right in every State and Territory to *** and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens ***."

Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A. provides in part:" Dismissal of complaint for failure to state claim is subject to de novo review and all factual allegations are taken as true." Fed. R. Civ. P.56 (c) provides: summary judgment should be entered only when" the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

STATEMENT OF THE CASE

1. This case arises from that State of Michigan Bureau of Automotive Regulation (BAR) officials respondents Ann Tear Allen ("Allen") and Walt Curtis ("Curtis") intentionally and deliberately turned the investigation of petitioners' automotive consumer complaint into harming, torturing and wrecking petitioners, and deprived petitioners of their consumer protection. When petitioner Yunhong Ding ("Ding") complained the BAR officials' violations, respondents Michigan Governor John Engler ("Engler"), Attorney General Jennifer Granholm ("Granholm"), Secretary of State Candice Miller ("Miller"), Michigan Department of Civil Rights (MDCRs) director Nanette Reynolds ("Reynolds"), BAR director Roger James("James"), and

BAR division director David Kilgren ("Kilgren") took no steps to stop the violations, and no remedial actions, but tolerated and continue to tolerate the violations, took false, fraudulent, torturous and harmful acts or practices to treat and dismiss petitioners' complaint against BAR officers' violation, and enforced petitioners to give up their complaint by increasing harming, torturing, and wrecking petitioners, turned petitioners' lives into a hellish and torturous experience.

The district court dismissed all the counts of the complaint, concluding that petitions' allegations and his proofs contain no evidence suggesting that any respondents violated their rights under rights under 42 U.S.C.§§§§ 1981 1983,1985 and 1986 and state law.

The Sixth Circuit affirmed the district court's judgment, concluding that Ding did not produce evidence in support of any of his claims on which a jury could reasonably find for him.

Because this is an appeal from the dismissal of an action pursuant to Federal Rule of Civil Procedure 12(b)(6) and 56(c), petitioners alleged the following facts in their 69 pages Complaint C.A. App.[1] 5-73:

Petitioner Ding is a citizen of People Republic of China. Petitioners Shiyang Ding ("Shiyang") and Daniel Shiwen Ding ("Daniel") are Ding's children. Petitioner Shiyang is Canada citizen (since March 2002) and petitioner Daniel is U.S citizen. Ding and his family resided in Ann Arbor, Michigan from March 22,1995 to March 22,1998. On Dec.26, 1997, petitioner Ding filed an automotive complaint

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[1] "C.A App." refers to the Excerpts of Record filed in the Court of Appeals.

in BAR against a garage Broadway for charging him for replacing the distributor that was not done. In the complaint form, Ding wrote: " My complaint is that they did not replace the distributor in my car by a used (recycled) distributor" and provided evidences to support why he believed that the garage Broadway charged him for replacing the distributor that was not done. C.A. App. 7, 10, 113-114.

Respondent Allen as a Field Investigator of BAR started to investigate petitioners' consumer claim on Aug.17, 1998 and finished it on Nov.24, 1998. Ding received the investigation report on Jan. 18,1999. C.A. App. 11.

According to Chronology of Investigation, on Aug.20, 1998 and Aug.26, 1998, the garage Broadway and its mechanic told respondent Allen that they did not replace the distributor, and they only replaced the pick-up plate (a small part) in the distributor of Ding's car. C.A. App.156-157. However, respondents in BAR still spent four months to investigate whether the garage Broadway replaced the distributor in Ding's car or not.

Because the garage Broadway repeatedly told Ding that they replaced the distributor in Ding's car by a used (recycled) distributor, which they purchased from a used part dealer (485-6933), but refused to show the purchasing receipt. Petitioner Ding first demanded BAR to investigate the receipt and that whether the dealer (485-6933) is a licensed dealer to sell the used distributor. Allen repeatedly told Ding that the dealer (485-6933) had the license to sell the used distributor to Broadway and would provide the receipt. Ding continued to express that he did not believe this dealer is a licensed dealer and insisted that BAR should investigate it. After the dealer (485-6933) could not provide the receipt, Allen told Ding that a used (recycled) distributor was not bought from the dealer (485-6933), but from another dealer Town and

Country Used Parts (TCUP) because TCUP can collect and sell the used distributor. Then respondent Allen fabricated such false record: "The complainant also noted that the facility never told him what used part dealer he obtained the used distributor from and only provide him with a telephone number 485-6933." and did not record that she repeatedly confirmed that that the dealer (485-6933) had the license to sell the used distributor to Broadway. Petitioner Ding told respondent Allen that this was garage's cheating, and this was why he asked BAR to investigate this. Ding expressed that he could demonstrate that the garage cheated him. Respondent Allen expressed " this is your matter" and that the garage said this was a mistake. Ding repeatedly expressed that this was a cheating, not a mistake. Respondent Allen fabricated " The complainant also indicated that Broadway Marathon provide incorrect information regarding where the used distributor was purchased from." C.A. App. 23-29, 32.

The garage presented a false receipt No.0003256 and said it was TCUP's. Respondent Allen and other BAR officers knew this receipt is false. Respondent Allen recorded that she investigated this receipt in TCUP and TCUP confirmed this purchase as the receipt showed. But Allen did not record that the owner of TCUP wrote a letter to BAR about this issue. When Ding told BAR that this receipt is false because no State Registration Number in this receipt, no any person sign in this receipt, no any part number of distributor in this receipt, and Broadway did not replace the distributor in Ding's car and then where to buy a used distributor and the receipt of buying a used distributor are false and a fraud. Ding asked respondent James and other officers how they confirmed this receipt and why a false receipt could appear in the investigation. BAR and its officer did not make any response to Ding's questions. C.A. App. 30-32, 39, 41.

Petitioner Ding never expressed that the garage returned an incompatible part. Allen fabricated the record; " The complainant noted that he request the replaced distributor and the facility returned an incompatible part", and then Curtis get such analysis report " all parts are compatible to the consumer's vehicle. The video submitted confirms the compatibility of the distributor submitted..". C.A. App. 15, 142.

Respondent Allen told Ding that they (BAR) could not confirm the distributor was replaced or not because all parts are used part. Ding told Allen that BAR could analyze the dust on the parts and this could confirm the replacement or not because the dust on the original distributor is special. Respondent Allen told Ding that BAR could not conduct such part dust analysis to confirm which one was original because two parts were kept by Ding. Then Ding told Allen that he made the video tape record on his car distributor condition on the next day after he picked up his car from Broadway. Respondent Allen agreed that Ding could mail the video tape to be evaluated. C.A. App. 16, 17.

Respondent Allen informed Ding the report of video tape analysis on phone. Although Ding's English is not good, but at least Ding heard and understood such expression made by Allen " The violation happen in this vehicle, but we (BAR) can't confirm this vehicle is that vehicle you sent to be repaired ." But in the final documents, Ding could not find what respondent Allen told him on telephone. Respondent Curtis, the Technical Section Supervisor in BAR, knew that Broadway charged Ding for replacing distributor that was not done, and that the video tape clearly show the distributor was not replaced. In order to harm petitioners, Respondent Curtis intentionally concluded in video tape analysis report: "...since the vehicle was taken in without "no start" condition and left running, it could be conclude that its replacement corrected

the problem." and " Undistinguished writing in yellow marker on side of distributor in video (a recycle marker)..." According to this conclusion, the garage replaced the distributor in petitioners' car by a used (recycled) distributor. C.A. App. 17-19.

When the investigation was finished, respondent Allen informed Ding that BAR would write the report according to Ding's request. After hearing this, Ding wrote 4 pages letter faxed to Allen. At this letter, Ding expressed that basic fact is that Broadway did not replace the distributor in his car, where to buy a used distributor was a fraud, and video tape and photograph clearly show the distributor in his car was not replaced. In order to stop Allen and other BAR officers' unlawful acts, Ding wrote "...Finally, I want to say your agency is a government agency, all your agency actions should be just. I hope I can get an objective report from your agency..." C.A. App. 19-20.

In the summary of the investigation report, respondent Allen fabricated such false allegation "complainant alleges that the facility did not install the used distributor in his vehicle." and used the authority to impose this false allegation on petitioner Ding. This action deprived petitioners of their consumer protection. Respondents Allen, Curtis, and BAR knew that the garage did not replace the distributor in Ding's car and the original distributor is also a used part, and then used authority to impose this false allegation on Ding and intentionally made Ding's complaint unsubstantiated and harmed petitioners. C.A. App. 12, 13.

Ding never made such false allegation " The facility did not install the used distributor in his vehicle." There was no any record in the Chronology of Investigation to show when Ding made such false allegation. There was no any record to show that the investigation was focused on such false

allegation. Respondent Allen never told Ding that investigation was conducted on whether a used distributor was installed or not. To the contrary, Ding definitely, clearly and repeatedly alleged that Broadway did not replace the distributor in his car by a used (recycled) distributor and this allegation was stated in his complaint form and 6 letters to respondent Allen and BAR. C.A. App. 10-12, 14.

Chronology of Investigation recorded that the investigation on petitioners automotive complaint began with petitioner's allegation that Broadway did not replace the distributor in his car by a used (recycled) distributor and ended with this conclusion that Broadway replaced the distributor in petitioner's car with a used (recycled) distributor with T&C yellow colored, recycled title which Broadway said they bought from the Town and Country Used Parts on Nov.28,1997, C.A. App. 21, even the garage had told respondents in BAR that they did not replace the distributor in Ding's car. Finally, Allen informed the garage that Ding's complaint was " Ding would have wanted a properly certified mechanic to perform the repairs on the 1987 Nissan Sentra." C.A. App. 22.

In the investigation of petitioners' automotive complain, respondents Allen, Curtis and other officers in BAR were not unable to substantiate petitioner's claim. Respondents Allen, Curtis and other officers in BAR knew that the garage charged petitioners' for replacing the distributor that was not done, illegally labeled a yellow print (recycled marker) on the original distributor, and presented a false receipt to commit a fraud. However, respondents Allen, Curtis and other officers in BAR were intentional and conspired to deprive petitioners of their consumer protection, and harm, torture and wreck Ding and his family. C.A. App. 34.

From Jan.1999 to Oct.1999, Ding sent their complaint letters which were against BAR officers' violations about 90 times to supervisory respondents Michigan Governor Engler, Secretary of State Miller, Attorney General Granholm, MDCRs director Reynolds, and BAR director James by mail, Fax and e-mail. C.A. App. 190-266.

In his complaint letters, petitioner Ding expressed that respondent Allen and BAR officers intentionally hurt him, violated his human rights, fabricated false allegations, notice and statements and imposed these on him, committed a fraud, et al. C.A. App. 53-54, 190-266.

On Feb.04, 1999, respondent Kilgren represented BAR to respond petitioners' complaint. At that time, respondent BAR director James and BAR division director Kilgren knew that BAR officers conducted the violations toward Ding and his family. Respondents in BAR had opportunity to stop the violation and reduce petitioners' sufferings. However, Respondent Kilgren wrote in his letter: "our investigation revealed that Broadway Marathon provided a copy of one invoice for a used distributor part from Town and County Used Parts dated11/28/97. While there is no conclusive proof that this part was installed in your car, our lab section technician (who is a master mechanic) concluded that the video tape of your car's engine compartment identifies that the distributor part appears to be a used part. The case ended with the result that we could not substantiate your assertion that Broadway charged you for installing a used distributor and never did so...". What is "While there is no conclusive proof that this part (recycled) was installed in your car," ? It is definite that Broadway did not replace the distributor in petitioner's car. What is "BAR was unable to substantiate your assertion that Broadway charged you for installing a used distributor and never did so"? On Oct. 13,1998, respondent Curtis wrote on the video tape and the replaced

distributor analysis report: "...since the vehicle was taken in without "no start" condition and left running, it could be conclude that its replacement corrected the problem." Therefore, respondents in BAR chose to intentionally and deliberately tolerate the violations, and take the false, harmful, deceptive and torturous practices and acts to treat and dismiss petitioners's complaint against the violation conducted by BAR's officers. C.A. App. 17, 36-38.

Ding sent their dozens complaint letters against BAR and its officers to Michigan Department of State. Respondent Secretary of State Miller only asked respondent James to write a letter to express that they satisfied the activities of BAR and its officers in handling of petitioners' complaints. When petitioners continued to complain that BAR unfairly handled their complaint against BAR and its officers, Miller never responded Ding's complaint. C.A. App. 35-43.

Ding sent their dozens complaint letters against BAR and its officers to respondent Granholm, Michigan Attorney General and her department. However, petitioners never got any response from respondent Granholm and her department. Respondent Granholm as the chief law enforcement officer in State clearly knew the violations conducted by BAR officers, and chose no any response to petitioners' complaints that they were victims of violations conducted by State governmental officers. C.A. App. 35-43.

When Governor Engler responded petitioners' complaints. He took the liberty of forwarding all petitioners concerns to MDCRs. Respondent Engler knew that MDCRs has no authority to handle petitioner's allegations that Allen fabricated false allegations and used authority to impose the false allegations on Ding, and a false receipt appeared in the investigation of a consumer complaint. Governor Engler intentionally subjected petitioners to the new constitutional

deprivation and outrageous physical and mental abuse by respondents in MDCRs and BAR. C.A. App. 43-45.

When Respondent MDCRs director Reynolds and her office handled petitioners' complaints. Ding alleged that BAR officers intentionally violated his human right because BAR officers fabricated false allegations, false notes and false statements and used authority to impose these on him in the investigation of consumer complaint. Respondent Reynolds responded in letter " The price was not a basis for finding of a human rights violation." Ding alleged that BAR conducted discrimination against him. Reynolds responded in letter that after MDCRs' review, MDCRs was not able to find that a garage Broadway discriminated against Ding. Ding pointed out that a receipt No.0003256 from TCUP dealer is false and listed the evidences, BAR knew this receipt is false. But Reynolds responded " The assertion that a signed, written estimate was fabricated requires more than the simple assertion that it is false." Ding expressed that he was charged for replacing distributor that was not done by the garage. Reynolds responded " In our economy, an unfair price is not prohibited..." C.A. App. 46-51.

Respondent Reynolds knew that most of allegations in petitioner's complaint are not within the scope of MDCRs authority. Respondent Reynolds directed her staffs and conspired with respondents in BAR to use false, harmful, deceptive and torturous acts or practices to treat and dismiss petitioners' complaint against BAR and its officers. C.A. App. 46-51.

Supervisory officials respondents Engler, Granholm, Miller, Reynolds, James and Kilgren knew that respondents Allen, Curtis and BAR other officers intentionally violated petitioners' rights, deprived petitioners of their Constitutional rights, harm, tortured and wrecked Ding. However,

motivated by discriminatory animus, All of them created and continue to create a hostile environment. In such hostile environment, violations conducted by governmental officers were and continue to be tolerated, respondents did nothing to stop the violations, what respondents did are fraudulently and torturously treating and dismissing petitioners' complaint, respondents enforced petitioners to give up their complaints by increasingly harming, torturing and wrecking petitioners." C.A. App. 51-59.

As a direct and proximate result of respondents' intentional and willful violations, petitioners' lives were turned into a hellish and torturous experience, petitioner Ding suffered the severe emotional distress, humiliation, anxiety, mental anguish, Posttraumatic Stress Disorder, physical pains and sufferings, past, present and future loss of earning, and damages to his career progression and professional reputation, and Shiyang and Daniel were and continue to be subjected to a adverse and devastated family life environment, petitioners suffered permanent damages of the more than two-year episodes on their life style, professional lives, enjoyment of life, personalities, economic well-being and general emotional well-being. C.A. App. 59-63.

2. Petitioners thereafter filed a complaint under 42 U.S.C. §§ 1981, 1983 (in violation of Fourteenth Amendments), 1985 and 1986 and state law by alleging, C.A. App. 64-71:

a) Respondents Allen and Curtis intentionally turned the investigation of petitioners' consumer complaint into harming, torturing, and wrecking petitioners by intentionally and deliberately fabricating the false allegations, false notes and false statements, and using their authority to impose these false

allegations, false notes and false statements on Ding and then fraudulently and torturously dismissing petitioners' consumer complaint, depriving petitioners of their consumer protection, and conspiring with a garage to conducting a fraud in the processing of Ding's consumer complaint, and these violations were continuously conducted after Ding protested, and these acts were conspired between them, among them, and with other respondents.

b) When Ding complained BAR officers' violations to supervisory agencies in State of Michigan, supervisory officers respondents Engler, Granholm, Miller, Reynolds, James and Kilgren knowingly and willingly created and continue to create a hostile environment against petitioners. In this hostile environment, respondents took no steps to stop the violations, and no remedial actions, but continued to tolerate the violation, and fraudulently and torturously treated and dismissed petitioners' complaint against BAR officers' violation, and enforced petitioners to give up their complaint by increasing harming, torturing, and wrecking petitioners, and these acts were conspired between them, among them and with other respondents .

c) The above-alleged acts of respondents were performed under color of state law and were motivated by racial and national animus.

d) The sole purpose of the above-alleged acts were to harm, torture, and wreck Ding and

his family. The above-alleged acts of respondents were so outrageous in character, and extreme in degree, as to go beyond all bounds of decency, and as to be regarded as atrocious and utterly intolerable in a civilized society. The above-alleged acts of respondents did ruin petitioners' lives.

3. Respondents Engler, Granholm, Miller and Reynolds moved a motion for dismissal pursuant to F.R.C.P 12(b)(6) by alleging the follow statements, C.A. App. 88-89,91-92:

a) The petitioners' consumer case ended with the result that BAR could not substantiate petitioners' assertion that the garage Broadway charged him for installing a used distributor and never did so.

b) Respondents Engler, Miller, Granholm, and Reynolds appropriately respond to Ding complaints about the BAR's failure to substantiate his claim.

c) Respondents alleged that Petitioner claims were that failure of respondents James, Kilgren, Curtis, and Allen, BAR employees, involved in the investigation of his claim, somehow violated his rights under the United States Constitution and constituted intentional infliction of emotional distress under state law.

d) Respondents are entitled to dismissal for failure to state a claim, because petitioner has not pled a violation of a constitutional right, much less a clearly established constitutional right, that would state a cause of action, or

avoid qualified immunity to plaintiff's claims under 42 USC § 1983,1985 or 1986.

e) Respondents alleged that petitioner's complaint does not state a claim under 42 USC § 1981, and state law claims for intentional infliction of emotional distress do not state a claim under state law and are barred by immunity granted by law.

4. The district court granted respondents' motion to dismissal for failure to state a claim, concluding in opinion: Ding found that the garage did not replace the distributor and that the distributor in his car was the original; Ding filed a complaint with BAR alleging that the garage had billed him for the installation of a used distributor but failed to install it; BAR determined that it lacked the conclusive proof that the garage installed a used distributor which the garage purchased; BAR concluded that the vehicle had a used distributor in it and therefore BAR was unable to substantiate petitioners' complaint. The district court asserted that petitioner allege that BAR officers failed to respond appropriately to his consumer complaint, and wrongfully failed to substantiate that complaint. Then, the district court order that respondents' acts did not violate any petitioners' constitutional rights and constituted the intentional infliction of emotional distress (Appendix C).

5. In the appeal brief, petitioners stated that the district court erred in refusing to accept petitioners' factual allegations in the complaint. Petitioners stated that Ding consumer complaint was that the garage did not replace the distributor in his car, after investigation respondents in BAR found that the garage did not replace the distributor, and then respondent Allen fabricated the false allegation " the facility did not install the used distributor in his vehicle" and imposed

it on Ding, and deprived petitioners of their consumer protection.

Respondents stated in reply brief: after an extensive investigation, petitioner's complaint was denied as unsubstantiated in that it could not be established that the distributor was replaced or not.

6. The Sixth Circuit affirmed (Appendix B, pp. 3a-7a). The court expressed that after reviewing Ding's complaint, the court find: "Ding filed a complaint with the BAR alleging the garage had defrauded him, Respondent Allen investigated Ding's complaint, and concluded that the complaint could not be substantiated." (Appendix B, pp. 5a-7a)

The Sixth Circuit expressed four reasons: 1) Ding had no § 1983 claim because his allegations did not implicate any federal right. 2) Ding's vague and conclusory allegations were unsupported by material facts and are not sufficient to state a conspiracy claim because the documents in the record show the respondents thoroughly investigated Ding's complaint and attempted to address his concerns. 3) The district court properly granted summary judgment to the respondents on Ding § 1981 because Ding's allegations that the respondents negligently or intentionally failed to properly investigate his complaint about his car do not fall within either provision. 4) Ding presented no proof that the respondents engaged in any extreme or outrageous conduct or that they intentionally or recklessly caused him emotional distress, which support his claim of intentional infliction of emotional distress. Therefore, the Sixth Circuit concluded that Ding did not produce evidence in support of any of his claims on which a jury could reasonable find for him. (Appendix B, 5a-7a)

7. In a petition for rehearing, Petitioner Ding expressed that the panel in the Sixth Circuit erred in affirming the district court's decision, for not only refusing to accept

petitioners' factual allegations, but also erroneously treated plaintiffs' factual allegations. The panel denied the petition by stated that the panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. (Appendix A)

REASONS FOR GRANTING THE WRIT

1. As foreigners and without the assistance of counsel, petitioners' complaint has satisfied the requirements to survive a rule12(b)(6) dismissal motion.

A. Standard of Review

Rule 8(a)(2) states that a "pleading which sets forth a claim for relief...shall contain ... a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). This Honorable Court has stated that " the Rule mean[s] what it sa[ys]." *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit,* 507 U.S. 163, 168, 113 S. C.t. 1160, 122 L Ed.2d 517 (1993). As the Court explained:

> [Under] the liberal system of " notice pleading" set up by the Federal Rules[,] Rule 8(a)(2) ... do[es] not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is " a short and plain statement of the claim" that will give the respondent fair notice of what the petitioner's claim is and the grounds upon which it rests.

In evaluating such a claim, the Court must accept as true all well-pleaded allegations of fact and view them in the light

most favorable to the petitioner. *See Jenkins v. Mckeithen,* 395 U.S. 411,421-22 (1969).

B. Discussion

Petitioners alleged in Complaint (C.A. App. 9-10) that Michigan Compulsory Law (MCL) 257.1 regulates BAR authority in the investigation of automotive consumer complaint. 257.1326(2)(e) provides: "Conduct mechanical and diagnostic examination of vehicles when there are reasonable grounds to believe that an unlawful act or practices was used to produce the repair or to make the repair". 257.1336 provides: "a facility ...engages in an unfair or deceptive method, act, or practice, is liable as provided in this act to a person who suffers damage or injury ...". 257.1338 provides: "Any person, agent, or employee of a registrant under this act who knowingly violates this act is guilty of a misdemeanor, ...". Constitution of Michigan of 1963 ARTICLE I § 17 provides in part: "...The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed."

Respondents Allen and Curtis knew that the garage charged petitioner Ding for replacing the distributor in his car that was not done (in fact, the garage had told them that the garage did not replace the distributor when the investigation began), illegally labeled the yellow marker (salvage title) on the original distributor, and presented the false receipt. However, respondents Allen and Curtis still conducted the investigation on whether the distributor in Ding's car was replaced or not, did their best to demonstrate that the garage replaced the original distributor by a used distributor with salvage title T&C, confirmed that the false receipt was true, and fabricated the false allegations and imposed these on

Ding, took fraudulent and harmful acts to dismiss petitioners' consumer complaint. Therefore, petitioners allege that Allen and Curtis intentionally turned the investigation of petitioners' automotive consumer complaint into harming, torturing, and wrecking petitioners by intentionally and deliberately fabricating the false allegations, false notes and false statements, and using their authority to impose these false allegations, false notes and false statements on Ding and then fraudulently and torturously dismissing petitioners' consumer complaint, depriving petitioners of their consumer protection, and conspiring with a garage to conducting a fraud in the processing of Ding's automotive complaint, and these violations were continuously conducted after Ding protested. Petitioners repeatedly alleged that the purpose of respondents BAR officers fabricating the false allegations, notes and statements and imposing these on Ding were: (1) respondents BAR officers had known that Ding was charged for replacing the distributor that was not done by the garage; (2) respondents enforced petitioners to give up their complaints by increasingly harming, torturing and wrecking petitioners; (3) depriving petitioners of their consumer protection.

Petitioners alleged that when Ding complained BAR officers' violations, respondents Engler, Granholm, Miller, Reynolds, James and Kilgren knowingly and willingly created and continue to create a hostile environment against petitioners. In this hostile environment, respondents took no steps to stop the violations, and no remedial actions, but continued to tolerate the violation, and or took false, fraudulent, torturous and harmful acts or practices to treat and dismiss petitioners' complaint against BAR officers' violation, and or enforced petitioners to give up their complaint by increasing harming, torturing, and wrecking petitioners, and turned petitioners' lives into a hellish and torturous experience.

Respondents' acts deprived petitioners of their consumer protection rights, fair and just treatment at investigations, and ruined petitioners' lives.

The Fourteenth Amendment to the United States Constitution provides in part "[n]o State shall *** deny to any person within its jurisdiction the equal protection of the laws."

42 U.S.C. § 1983 provides in part:

> " Every person who, under color of any statue, ordinance, regulation, custom, or usage, of any State *** subjects or cause to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law *** "

Therefore, Petitioners alleged that under color of state law and motivated by racial and national animus, all respondents intentionally and deliberately conducted the above-alleged violations, and thereafter, these deprived petitioners of their constitutional rights guaranteed by the Fourteenth Amendments of the United States Constitution and protected by 42 U.S.C.§ 1983. (C.A. App.64-67) Petitioners have showed not only that the respondents' acts were unconstitutional, but also that they knew at that time that they were violating petitioners' clearly established rights.

42 U.S.C. § 1985(3) provides in part: " If two or more persons in any State or Territory conspire *** for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, *** or to injure any citizen in person or *** ; in any case of conspiracy set

forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States ***"

Petitioners alleged and provided facts that as s result of conspiracy between and among respondents, respondents turned the investigations of petitioners' complaints into harming, torturing, and wrecking petitioners, and respondents turned petitioners' lives into a hellish and torturous experience, Respondents' conspiracy were motivated by racial and national animus. Therefore, petitioners claim satisfy the elements of claim under § 1985(3) and 1986. C.A. App. 67-69.

Petitioners alleged that all respondents violated petitioners' clear and well-established constitutional rights to receive the same fairly handling as complaints of other races and American citizens (C.A. App.69-70), because 42 U.S.C. § 1981 provides in part: " All persons within the jurisdiction of the United States shall have the same right in every State and Territory to *** and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens *** ."

Petitioners alleged that the sole purpose of respondents' above-alleged willful, intentional, egregious and unlawful acts was to harm, torture, and wreck petitioners, and respondents did ruin petitioners' lives and turn petitioners' lives into a hellish and torturous experience, cause petitioners to suffer the permanent damages. Petitioners alleged that the above-stated acts of respondents were so outrageous in character, and extreme in degree, as go to beyond all bounds of decency, and as to be regarded as atrocious and utterly intolerable in a civilized society (C.A. App. 70-71).

Petitioners' claim satisfy the four elements to establish a claim of intentional infliction of emotional distress: (1) extreme and outrageous conducts;(2) intent or reckless; (3) causation;(4) severe emotional distress. *See Duran v. The Detroit News, Inc.*, 200 Mich. App.622,629-30, 540N.W.2d 715(1993) (citing *Roberts v. Auto-Owners Ins. Cos.*, 422 Mich.594,602,374 N.W. 2d 905(1985).

There is no doubt that respondents' above-alleged willful, intentional, egregious and unlawful acts violated petitioners' constitutional rights under 42 U.S.C.§§ 1981 1983,1985 and 1986 and state law and petitioners have pled sufficient facts to support their claims. The question before this Honorable Court is whether the Court of Appeals accepted the above well-pleaded allegations of facts when reviewing the district court's granting respondents' motion to dismiss petitioners' claims under Fed. R. Civ. P. 12(b)(6) and 56(c) and whether the rights of this Chinese family should be vindicated in the United States.

2. The Court of Appeals erred in affirming that the district court granted respondents' motion to dismiss petitioners' claims under Fed. R. Civ. P. 12(b)(6) and 56(c), for not only refusing to accept petitioners' factual allegations, but also imposing a false allegation on petitioner.

A. Standard of Review

Ordinarily, a complaint should not be dismissed for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) unless it appears beyond all doubt that the petitioner can prove no set of facts in support of his claim that entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Dismissal of complaint for failure to state claim is subject to de novo review and all factual allegations are taken as true.

Fed. Rules Civ. Proc. Rule 12(b)(6), 28 U.S.C.A. The appellate court uses the same test as used by the district court. *See Brooks v. American Broadcasting Cos,* 932 F2d 495, 500(6th Cir. 1991). The complaint must be construed in the light most favorable to petitioner, and its well-pleaded facts must be accepted as true. *Scheuer v. Rhodes,* 416 U.S. 232, 236, 94(1973). Under the Federal Rules of Civil Procedure, summary judgment should be entered only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P.56 (c).

B. Discussion

The Sixth Circuit and district court both committed two errors in making their decision granting respondents' motion to dismiss petitioners' claim under Fed. R. Civ.P.12(b)(6) and 56(c):

1) Error One

The Sixth Circuit and district court both refused to accept petitioners' factual allegations set up in Complaint. If the Sixth Circuit and district court had accepted petitioners' factual allegations, the Sixth Circuit and district court must have discussed whether that respondents in BAR fabricated the false allegation, false note and false statements, and used authority to impose these false allegation, note and statements on petitioner Ding constitutes a unconstitutional act, whether that respondents in BAR fraudulently and torturously treated and dismissed petitioner's consumer complaint violates petitioners' rights under the Fourteenth Amendments of the United States Constitution and protected by 42 U.S.C § 1983, whether respondents in BAR intentionally turned the investigation of petitioners' consumer complaint into hurting,

torturing and wrecking Ding and his family violates petitioners' equal protection rights., whether that supervisory respondents tolerated and allowed BAR and its officers' unlawful behaviors to continue constitutes the constitutional violations, whether respondents use the ways by which they handled petitioners' complaints to handle American citizens' complaints, and whether respondents' actions are a "highly personal injury" beyond discrimination and the constitutional violations, et al.

The district court concluded that respondents in BAR were unable to substantiate petitioners' complaint with BAR alleging that the garage had billed Ding for the installation of a used distributor but failed to install it, because there was a used distributor in Ding's car. The district court orders that respondents' acts did not violate any petitioners' rights and state law(Appendix C).

In the appeal brief, petitioners stated that the district court erred in refusing to accept petitioners' factual allegations in the complaint. Petitioners stated that Ding consumer complaint was that the garage did not replace the distributor in his car, after investigation respondents in BAR found that the garage did not replace the distributor, and then respondent Allen fabricated the false allegation " the facility did not install the distributor in his vehicle" and imposed it on Ding, and deprived petitioners of their consumer protection.

Respondents stated in reply brief: after an extensive investigation, petitioner's complaint was denied as unsubstantiated in that it could not be established that the distributor was replaced or not.

The Sixth Circuit expressed their finding: " Ding filed a complaint with the BAR alleging the garage had defrauded him, Respondent Allen investigated Ding's complaint, and concluded that the complaint could not be substantiated."

Based their finding, the Sixth Circuit panel incorrectly listed four reasons and concluded that Ding did not produce evidence in support of any of his claims on which a jury could reasonable find for him (Appendix B). The Sixth Circuit's finding, reasons and conclusion are incorrect, because the Sixth Circuit refused to accept petitioners' factual allegations and there is no any facts to support the Sixth Circuit's finding, reasons and conclusion.

What was petitioners' consumer complaint? It was that the garage did not replace the distributor in Ding's car by a used (recycled) distributor. Petitioners repeatedly alleged that respondents in BAR fabricated the false allegations, false notes and false statements, and used their authority to impose these false allegations, false notes and false statements on Ding, because respondents had known that the garage charged Ding for replacing distributor that was not done. Chronology of Investigation recorded that at the beginning of the investigation, the garage informed respondent Allen that they did not replace the distributor in Ding's car, they only replaced a pickup plate (a small part) in the distributor of petitioners' car. However, respondents in BAR still spent four months to conduct the investigation on whether the distributor in Ding's was replaced or not. Four conclusions appeared in the investigation: (1) At first BAR told petitioner Ding that the violations happened in this car, but finally this conclusion did not appear in investigation report; (2) Chronology of Investigation ended with the result that the garage replaced the distributor in Ding' car with a used distributor with T&C yellow colored, salvage title which the garage said they bought from the Town and Country Used Parts on Nov.28,1997; (3) Summary of investigation report expresses that BAR was unable to determine whether the distributor was replaced or not. (4) BAR expressed that they

could not substantiate Ding's assertion that Broadway charged you for installing a used distributor and never did so.

The undisputed fact is that respondent Allen fabricated the false allegation "the facility did not install the used distributor in his vehicle." and imposed it on Ding. Ding never made such false allegation, there was no any record to show that Ding made such false allegation. According to this false allegation "The facility did not install the used distributor in his vehicle." This false allegation means the original part was not in plaintiffs' car or there was not a used distributor in Ding's car. Ding's car is 1987 model, a used car. The parts in Ding's car are also used parts. Broadway said they replaced the distributor in Ding's car by a used one. This meant that a used part was used to replace a used part in Ding's car. The replacement was performed or not, there was still a used distributor in Ding's car. Allen, Curtis and other officers in BAR had known that Ding's proofs (videotape, photograph picture) and false receipt had confirmed that Broadway did not replace the distributor in Ding vehicle, and they had gotten this conclusion, and the garage also had told respondents in BAR that they did not replace the distributor in Ding's car. However, respondents in BAR used their authority to impose this false allegation record on Ding and then fraudulently and torturously dismissed petitioners' automotive complaint. Petitioners alleged that respondents in BAR fabricated this false allegation, and used their authority impose it on Ding. The purpose of this action was to harm, torture and wreck Ding and deprived petitioners of their consumer protection and respondents in BAR did. C.A. App. 10-14.

When Ding complained Allen's violations, Respondent Kilgren responded Ding: "our investigation revealed that Broadway Marathon provided a copy of one invoice for a used distributor part from Town and County Used Parts dated

11/28/97. While there is no conclusive proof that this part was installed in your car, our lab section technician (who is a master mechanic) concluded that the video tape of your car's engine compartment identifies that the distributor part appears to be a used part. The case ended with the result that we could not substantiate your assertion that Broadway charged you for installing a used distributor and never did so..." What is " While there is no conclusive proof that this part(recycled) was installed in your car,"? It is definite that the garage did not replace the distributor in Ding's car. The garage also informed BAR that they did not replace the distributor in Ding's car. What is "BAR was unable to substantiate your assertion that Broadway charged you for installing a used distributor and never did so ? Respondent Curtis wrote on the video tape and replaced part analysis report: "...since the vehicle was taken in without "no start" condition and left running, it could be conclude that its replacement corrected the problem."

When respondents in BAR conducting the above-alleged acts, respondents in BAR had known the garage did not replace the distributor in Ding's car, illegally labeled the yellow marker (salvage title) on the original distributor, and presented the false receipt.

Therefore, respondents in BAR were not to conduct the investigation on petitioners' consumer complaint. Respondents in BAR intentionally and deliberately turned the investigation of petitioners' consumer complaint into harming, torturing, and wrecking petitioners, and deprived petitioners of their consumer protection. However, the low courts refused to accept petitioners' well-pleaded allegations of facts, which constitutes denying petitioners' rights to set a complaint against respondents in federal court.

2) Error Two

The Sixth Circuit and district court both intentionally imposed the false allegation " the defendants negligently or intentionally failed to properly investigate his complaint about his car." on petitioner Ding.

Petitioner Ding never alleged that the respondents failed to properly investigate his consumer complaint. In petitioners' 69 pages Complaint C.A. App. 5-73, there was no any expression to contain this meaning that BAR failed to properly investigate petitioner's consumer complaint. To the contrary, petitioners repeatedly alleged that Respondents in BAR intentionally turned the investigation of their consumer complaint into harming, torturing and wrecking petitioners, and fraudulently and torturously treated and dismissed his consumer complaint, and deprived of their consumer protection. There was also no any expression to contain the meaning that BAR failed to substantiate the consumer complaint in petitioner Ding's 90 times complaint letters against BAR officials' violation C.A. App.190-266. To the contrary, petitioners repeatedly complained that BAR officials intentionally hurt him, violated his human rights, fabricated false allegations, notice and statements and imposed on him, committed a fraud, et al.

The Sixth Circuit and district court both repeatedly asserted that petitioner Ding alleged that BAR failed to properly investigate his complaint (Appendix B, pp. 4a, 6a and Appendix C, pp. 11a, 13a and 16a). Both courts did not indicate where they located that petitions alleged that BAR failed to properly investigate petitioner's complaint. Both Sixth Circuit and district court's assertions are false, because petitioner Ding never alleged that BAR failed to properly investigate petitioner's complaint and there is no any record to support their assertions. In order to dismiss petitioners'

civil case, both Sixth Circuit and district court consistently imposed this false allegation on petitioner Ding and then dismissed petitioners' claims.

3. The low courts' decisions in the instant case, if allowed to stand, will create a chilling and harmful precedent, and tell this Chinese family and persons similarly situated that there is no way to get their rights vindicated in United States.

A. Standard of Review

The same standard of review stated in reason 1 and 2 applies here.

B. Discussion

Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A and Fed. R. Civ. P.56 (c) demand the trial court to justly and fairly treat plaintiff's complaint. This Honorable Court and Sixth Circuit Court have long honored and treasured viewing complaint in the light most favorable to the party opposing the motion to dismiss for failure to state claim. *See, e.g. Scheuer v. Rhodes,* 416 U.S. 232, 236,94(1973);.*Jenkins v. Mckeithen,* 395 U.S. 411,421-22 (1969); *Collins v. Nagle,* 892 F.2d 489, 493 (6th Cir. 1989); *Morgan v. Church's Fried Chicken,* 829 F.2d 10,12(6th Cir. 1987). However, in this instant case, in order to dismiss petitioners' claims, the Sixth Circuit and district court both not only refused to accept petitioners' factual allegations, but also imposed the false allegation on petitioner Ding.

The law will now be that as foreigners and without the assistance of counsel, and having pled sufficient specific facts to state claims, this Chinese family's rights under the Constitution of United States and law of State of Michigan should be vindicated or trampled in United States. This

Honorable Court should now consider this important decision. This Honorable Court's decision will tell this Chinese family and persons similarly situated whether there is the way to get their rights vindicated in United States.

CONCLUSION

For all of the reasons set forth in this petition, petitioners pray this Honorable Court to grant this petition for a writ of certiorari.

Respectfully submitted,

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Windsor, ON N9G 2C8
Canada
Phone: (519)-966-4735

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 02-1817

[Filed April 24, 2003]

YUNHONG DING, individually and as next friend of SHIYANG DING, a minor and DANIEL SHIWEN DING, a minor Plaintiffs-Appellants, v. JOHN ENGLER, et al., Defendants-Appellees.	)

Before: GUY and MOORE, Circuit Judges; BECKWITH*, District Judge.

ORDER

The court having receiving a petition for rehearing en banc, and the petition having been circulated not only to the

* The Honorable Sandra S. Beckwith, United States District Court Judge for the Southern District of Ohio, sitting by designation.

original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ _____
Leonard Green, Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 02-1817

[Filed January 29, 2003]

YUNHONG DING, individually and as next friend of SHIYANG DING, a minor and DANIEL SHIWEN DING, a minor
Plaintiffs-Appellants,

v.

JOHN ENGLER, et al.,
Defendants-Appellees.

Before: GUY and MOORE, Circuit Judges; BECKWITH*, District Judge.

ORDER

Yunhong Ding appeals the district court judgment dismissing his civil rights complaint filed under 42 U.S.C.

* The Honorable Sandra S. Beckwith, United States District Court Judge for the Southern District of Ohio, sitting by designation.

§§1981, 1983, 1985, and 1986, and state law. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary and injunctive relief, Ding sued Michigan Governor John Engler, Attorney General Jennifer Granholm, Secretary of State Candice Miller, Michigan Department of Civil Rights Director Nanette Reynolds, and four employees of the Bureau of Automotive Regulation(BAR): Rodger James, David Kilgren, Walt Curtis and Ann Tear Allen. Ding filed the complaint in his own name and on behalf of his minor children Shiyang Ding and Daniel Shiwen Ding. Ding alleged that the defendants failed to respond appropriately to his consumer complaint about repairs to his car. Defendants Engler, Granholm, Miller and Reynolds moved to dismiss the case for failure to state a claim. *See* Fed. R. Civ. P. 12(b)(6). The district court considered matters outside the pleadings, treated the motion as one for summary judgment, *see* Fed. R. Civ. P. 12(c), and granted summary judgment to all of the defendants. The court held that Ding had not produced any evidence of discrimination, conspiracy, or intentional infliction of emotional distress.

In his timely appeal, Ding argues that the district court erred by : (1) accepting the defendant's version of the facts; and (2) finding that Ding failed to sufficiently allege violations of constitutional rights and the intentional infliction of emotional distress.

This court reviews an order granting summary judgment de novo. *Holloway v. Brush,* 220 F.3d 767, 772 (6 th Cir. 2000). Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c) .

Upon review, we affirm the district court's decision for the reasons stated by the district court. According to Ding's complaint, he is a citizen of the People's Republic of China and came to Michigan as a visiting scholar in 1995. In 1997, he took his 1987 Nissan Sentra to a garage in Ann Arbor, Michigan, for repair. Believing the repair shop had defrauded him, Ding filed a complaint with the BAR. Defendant Allen investigated Ding's complaint for the BAR, and concluded that the complaint could not be substantiated. The BAR did find, through, that the mechanic who worked on Ding's car had let his certification lapse. Ding contacted Allen several times during the course of the investigation, and contacted Governor Engler, Secretary of State Miller, and Attorney General Granholm after the BAR complete its investigation. The BAR's report included the notation that " Ding would have wanted a properly certified mechanic to perform the repairs on the 1987 Nissan Sentra." Ding claimed that this statement was false, and that the BAR made the statement to inflict severe emotional distress on him. Ding claimed that the defendants fraudulently treated him, harmed him, tortured him, and wrecked him.

The defendants were entitled to a judgment as a matter of law. First, Ding had no § 1983 claim because his allegations

did not implicate any federal right. *See Flagg Bros. v. Brooks*, 436 U.S. 149, 155-57(1978). Second, Ding's allegations did not support a claim under § 1985 or § 1986. The documents in the record show that the defendants thoroughly investigated Ding's complaint and attempted to address his concerns. Despite the defendants' efforts, Ding remained convinced that garage had cheated him and that the defendants' failure to find any wrong-doing meant that they were part of the conspiracy against him. Ding's vague and conclusory allegations were unsupported by materials facts and are not sufficient to state a conspiracy claim. *See Kensu v. Haigh,* 87 F.3d 172, 175-76 (6th Cir. 1996). Because Ding had no claim under § 1985, he also had no cause of action under § 1986. *See Braley v. City of Pontiac,* 906 F.2d 220,227 (6th Cir. 1990). Accordingly, the defendants were entitled to judgment in their favor on Ding's § 1985 and § 1986 claims.

Third, the district court properly granted summary judgment to the defendants on Ding's § 1981 and § 1982 claims. Ding's allegations that the defendants negligently or intentionally failed to properly investigate his complaint about his car do not fall within either provision. *See Christian v. Wal-Mart Stores, Inc.,* 252 F.3d 862, 867-68 (6th Cir. 2001)(§ 1981*); United States v. Brown*, 49 F.3d 1162, 1166 (6th Cir. 1995)(§ 1982). Finally, the defendants were entitled to summary judgment on Ding's claim of intentional infliction of emotional distress. Ding presented no proof that the defendants engaged in any extreme or outrageous conduct or that they intentionally or recklessly caused him emotional distress. *See Roberts v. Auto-Owners Inc. Co.*, 374 N.W.2d 905,908(Mich.1985).

Ding did not produce evidence in support of any of his claims on which a jury could reasonably find for him. *See Anderson v. Liberty Lobby, Inc.*,477 U.S. 242,252(1986). For the foregoing reasons, we affirm the district's court' order. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ _____
Leonard Green, Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 5:01 cv 111
Hon. Douglas W. Hillman

[Dated June 20, 2002]

YUNHONG DING, individually and as next friend of SHIYANG DING, a minor and DANIEL SHIWEN DING, a minor Plaintiffs, v. JOHN ENGLER, JENNIFER MULHERN GRANHOLM, CANDICE S. MILLER, NANETTE LEE REYNOIDS [Reynolds], RODGER JAMES, DAVID KILGREN, WALT CURTIS,ANN TEAR ALLEN, Defendants	)

ORDER AND JUDGMENT

In accordance with the opinion filed this date,

IT IS ORDERED that defendants' motion to dismiss (docket #15) is granted.

IT IS FURTHER ORDERED AND ADJUDGED that judgment is entered in favor of defendants, and this case is dismissed with prejudice.

/s/ _____
Douglas W. Hillman
Senior District Judge

Dated: June 20, 2002

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 5:01 cv 111
Hon. Douglas W. Hillman

[Dated June 20, 2002]

YUNHONG DING, individually and as next friend of SHIYANG DING, a minor and DANIEL SHIWEN DING, a minor Plaintiffs, v. JOHN ENGLER, JENNIFER MULHERN GRANHOLM, CANDICE S. MILLER, NANETTE LEE REYNOIDS [Reynolds], RODGER JAMES, DAVID KILGREN, WALT CURTIS,ANN TEAR ALLEN, Defendants	)

OPINION RE DEFENDANTS' MOTION TO DISMISS

This is a civil rights action filed pursuant to 42 U.S.C.§§ 1981, 1983, 1985 and 1986 and the Fourteenth Amendment of the United States Constitution. The action also raises a state-law claim of intentional infliction of emotional distress. The matter presently is before the court on defendants' motion

to dismiss for failure to state a claim (dkt #15).[1] For the reasons that follow, the motion is granted.

I.

Plaintiff Yunhong Ding, acting individually and as next friend to his sons, Shiyang Ding and Daniel Shiwen Ding, has brought the instant action for damages and injunctive relief against defendants Governor John Engler, Attorney General Jennifer Granholm, Secretary of State Candice Miller, Michigan Department of Civil Rights Director Nanette Reynolds, and four employees of the Bureau of Automotive Regulation(" BAR"), Rodger James, David Kilgren, Walt Curtis and Ann Tear Allen. Plaintiff alleges that the named governmental officials failed to respond appropriately to his consumer complaint, wrongfully failed to substantiate that complaint, and subjected plaintiff to fraudulent and torturous treatment through their investigation, which allegedly caused him severe emotional distress and devastated his family life.

On November 27, 1997, plaintiff took his 1987 Nissan Sentra to the Broadway Marathon garage in Ann Arbor, Michigan, for repair because the car would not start. The Broadway Marathon purportedly replaced the vehicle's distributor with a used distributor and charged plaintiff $279.50 in parts and labor for the repairs. Plaintiff was given

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[1] The instant motion to dismiss was filed only by defendants John Engler, Jennifer Granholm, Candice Miller and Nanette Reynolds. The remaining defendants have not yet appeared in the action. In light of the fact that the allegations of the complaint and attached exhibits patently fail to support any claim against any defendant, the court will decide the question of dismissal as to all defendants.

the part the garage claimed it replaced. The vehicle started and ran after the work was performed. Upon returning home, plaintiff looked at the new(used) part and became convinced that the part had never been replaced and that the distributor in his car was the original.

Plaintiff filed a complaint with the BAR on December 26, 1997, alleging that the garage had billed him for the installation of a used distributor but failed to install it. Therefore, plaintiff communicated on dozens of occasions with the BAR investigator, defendant Ann Tear Allen, regarding his complaint. Allen conducted an investigation for nearly a year, which included an examination of documents, an inspection of the part removed, a review of a videotape of the distributor in plaintiff's vehicle, and review of all certifications held by the garage and mechanics. She obtained documentary evidence of the purchase of a used distributor by the garage on the relevant date and made numerous inquiries of the garage owner and employees.

Allen eventually completed a 12-page report documenting extensive investigator contacts with both plaintiff and garage personnel. Examiners with the BAR concluded that the returned part was compatible with the vehicle in question and that the part installed on the automobile also was appropriate. The BAR determined that it lacked conclusive proof that the part was installed by the garage but, based on the evidence available, the Technical Division Supervisor, defendant Walt Curtis, concluded that the vehicle had a used distributor in it. The BAR therefore reported that it was unable to substantiate plaintiff's complaint. During the review process, however, the BAR determined that mechanic who worked on plaintiff's vehicle did not have a current mechanic's license. The BAR

therefore cited the garage for noncompliance on this basis. In delivering its citation on a violation not part of the original compiaint, the BAR noted its belief that " Yunhong Ding would have wanted a properly certified mechanic, to perform the repairs on the 1987 Nissan Sentra."

Ding thereafter wrote repeatedly to Michigan Secretary of State Candice Miller, Attorney General Jennifer Granholm, and Governor Engler. Ding complained that he was defamed by the statement that he would have wanted a licensed mechanic to perform the work, and he asserted that the BAR had failed to substantiate his complaint because he was a Chinese national. Governor Engler responded to Ding's letter and referred his discrimination claim to the Michigan Department of Civil Rights. Defendant Rodger James, Director the BAR, writing on behalf of Candice Miller, responded to specific questions raised by Ding and advised Ding that he had independently reviewed the file and agreed with the conclusions of his division director, defendant David Kilgren. Attorney General Granholm apparently did not respond.

Ding contends that he was subjected to outrageous humiliation, emotional torture and defamation by the conduct of the defendants in their investigation, specifically in stating that he would have wanted a certified mechanic and in failing to substantiate his complaint. Plaintiff contends that this described treatment was discriminatory on the basis of his race or national origin. As a result of his treatment, plaintiff alleges that he has experienced severe emotional harm and that his sons have been injured by their father's emotional disturbance and depression.

II.

A. Standard of Review

Under Fed. R.Civ.P.12(b), a complaint may be dismissed if " it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson,* 355 U.S. 41, 45-46(1957); *Hishon v. King & Spalding,* 467 U.S. 69, 73 (1984). The complaint must be construed in the light most favorable to the plaintiff, and its well-pleaded facts must be accepted as true. *Morgan v. Church's Fried Chicken,* 829 F.2d 10,12 (6th Cir. 1987). However, the court need not accept as true legal conclusions or unwarranted factual inferences. Lewis v. ACB Business Serv., Inc.,135 F.3d 389,405 (6th Cir. 1998). A complaint fails to state a claim upon which relief can be granted when it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations of the complaint. *Jones v. City of Carlisle*, 3 F.3d 945,947(6th Cir. 1993), cert. denied, 510 U.S. 1177(1994).

Pursuant to FED.R.CIV.P 12 (c) , when a party filing a motion to dismiss presents and the court considers matters outside the pleadings, the motion may be converted into one for summary judgment under FED.R.CIV.P.56, as long as all parties are permitted a reasonable opportunity to submit supporting materials. *Id.*; *see also Noble v. Schmitt*, 87 F.3d 157,160(6th Cir. 1996); *English v. Dyke*, 23 F.3d 1086, 1091(6th Cir. 1994). Here, both plaintiff and defendants have submitted written documentation of the investigation materials and communications relevant to plaintiff's claim. The motion therefore will be treated as on for summary judgment.

On a motion for summary judgment, the court must consider all pleadings, depositions, affidavits and admissions and draw all justifiable inferences in favor of the party opposing the motion. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587(1986). The court, however, " need not accept as true legal conclusions or unwarranted factual inferences." *Michigan Paytel Joint Venture v. City of Detroit*, 287 F.3d 527,533(6th Cir. 2002). (quoting *Morgan v. Church's Fried Chicken*, 829 F.2d 10,12 (6th Cir. 1987). The party moving for summary judgment has the burden of pointing the court to the absence of evidence in support of some essential element of the opponent's case. *Celotex Corp. v. Catrett*, 477 U.S. 317,323 (1986); *Street v. J.C.Bradford & Co.*, 886 F.2d 1472, 1479(6th Cir. 1989). Once the moving party has made such a showing , the burden is on the nonmoving party to demonstrate the existence of a genuine issue for trial. *Id.*

In order to prove that a triable issue exists, the nonmoving party must do more than rely upon allegations, but must come forward with specific facts in support of his or her claim. *Celotex*, 477 U.S. at 322; *Mulhall v. Ashcroft*. 287 F. 3d 543, 550 (6th Cir. 2002). After reviewing the whole record, the court must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Booker v. Brown & Williamson Tobacco Co., Inc.*, 879 F.2d 1304, 1310 (6th Cir. 1989) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,251-52(1986)). " [D]iscredited testimony is not [normally] considered a sufficient basis"" for defeating the motion. *Anderson*, 477 U.S. at 256-57 (quoting *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 512(1984)). In addition,

where the factual context makes a party's claim implausible, that party must come forward with more persuasive evidence demonstrating a genuine issue for trail. *Celotex,* 477 U.S. at 323-24; *Matsushita*, 475 U.S. at 586-87; Street, 886 F.2d at 1480.

B. Civil Rights Claims

Plaintiff Ding alleges violations of 42 U.S.C. §§ 1981,1983,1985 and 1986 and the Fourteenth Amendment of the United States Constitution.

To state a viable § 1983 claim, a plaintiff must allege that: (1) he was deprived of a right, privilege, or immunity secured by the Constitution or laws of the United States; and (2) the deprivation was caused by a person while acting under color of state law. *Flagg Bros. v. Brooks*, 436 U.S. 149, 155-57(1978). Plaintiff's theory of constitutional violation is somewhat unclear. Apparently, he contends that he was subjected to discrimination on the basis of his race or national origin in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Plaintiff's allegation and his proofs contain no evidence suggesting that any defendant discriminated against him in any fashion. The record reflects extensive and courteous investigation. Plaintiff has failed to suggest that he was treated differently from any other person of any race or origin. Plaintiff therefore has failed to present a triable issue on the question of racial or ethnic discrimination. Moreover, to the extent plaintiff suggests that defendants inadequately or negligently investigated his complaint regarding his automobile repair, his complaint must fail. Plaintiff has no

constitutional right to an investigation into vehicle repair complaints.

Plaintiff also fails to state a cause of action under §§ 1985(3) and 1986. Section 1985(3) requires a plaintiff to prove (1) a conspiracy involving two or more persons (2) for the purpose of depriving, directly or indirectly, a person or class of persons of the equal protection of the laws, and (3) an act in furtherance of the conspiracy (4) which causes injury to a person or property, or a deprivation of any rights or privilege of a citizen of the United States. *Collyer v. Darling*, 98 F.3d 211,223 (6th Cir. 1996),cert. denied, 520 U.S. 1267(1997). Plaintiff has not demonstrated the existence of a conspiracy or even alleged such conspiracy in other than conclusory terms. Similarly, as previously stated, plaintiff has alleged no conduct evidencing a racial or other impermissible motivation. As a result, plaintiff's claims are insufficient to establish a claim against the defendants. *See Kensu v. Haigh*, 87 F.3d 172, 175-76(6th Cir. 1996); *Gutierrez v.. Lynch*, 826 F.2d 1534,1538 (6th Cir. 1987). . Further, to the extent plaintiff suggests that BAR employees conspired with each other, the claim also is barred by the " intracorporate doctrine," which provides that where all of the defendants are members of the same collective entity, there are not two separate people to form a conspiracy. *See Hull v. Cuyahoga Valley Joint Vocational Sch. Dis.Bd. of Educ.*, 926 F 2d 505, 510 (6th Cir. 1991). As a result, plaintiff fails to support a claim under §1985. Since 1986 merely provides for a cause of action for the wrongs mentioned in § 1985. Therefore, since there is no claim stated under § 1985, there can be no claim stated under § 1986. *See Seguin v. City of Sterling Heights*, 968 F.2d 584, 590 (6th Cir. 1992).

Finally, to establish a claim under §1981 or §1982, plaintiff must allege facts in support of the following elements: (1) plaintiff is a member of a racial minority, (2) defendant intended to discriminate on the basis of race, and (3) the discrimination concerned one or more of activities enumerated in the statute. *Morris v. Office Max, Inc.*, 89 F.3d 411,413 (7th Cir. 1996); *Seguin v. City of Sterling Heights*, 968 F.2d 584, 590 (6th Cir. 1992);*Ana Leon T. v. Federal Reserve Bank*, 823 F.2d 928, 931 (6th Cir.), cert. denied, 484 U.S. 945(1987). Section 1981 addresses racial discrimination in contractual relationships, and §1982 deals with discrimination in property transactions. Morris, 89 F.3d at 413. Ding has not alleged any of facts to support claims of discrimination under §§ 1981 and 1982, and neither section is relevant to his allegations about the investigation of his consumer complaint.

Accordingly, plaintiff has failed to establish a claim of violation of any of the cited federal statutes. Defendants therefore are entitled to summary judgment on the federal claims.

C. Intentional Infliction of Emotional Distress

In order to establish a claim of intentional infliction of emotional distress, a plaintiff must prove four elements: (1) extreme and outrageous conducts; (2) intent or recklessness; (3) causation; and (4) severe emotional distress. *See Duran v. The Detroit News, Inc.*, 200 Mich. App.622,629-30, 540N.W.2d 715(1993) (citing *Roberts v. Auto-Owners Ins. Cos.*, 422 Mich.594,602,374 N.W. 2d 905(1985). Conducts supporting a claim of intentional infliction of emotional distress must be

> so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community ....The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.

Roberts, 374 N.W.2d at 909 (quoting RESTATEMENT TORTS 2D, § 46, comment d, pp. 72-73). In *Doe v. Mills*, 212 Mich. App. 73, 91, 536 N.W.2d 824 (1995), the Michigan Court of Appeals explained that " it is initially for the court to determine whether the defendant's conduct reasonably may be regard as so extreme and outrageous as to permit recovery." *See also Teadt v. Lutheran Church Missouri Synod*, 237 Mich. App. 567, 603 N.W. 2d 816 (2000).

In the instant case, plaintiff's allegations specify no conduct that could objectively be considered either insulting or annoying, much less the kind of conduct so outrageous as to be encompassed by the tort. No reasonable factfinder could conclude that petitioner has been subjected to conduct within the meaning of the tort. Plaintiff also has failed to provide facts from which a factfinder could conclude that any defendant acted with the requisite intent to cause harm. Accordingly, defendants are entitled to summary judgment on plaintiff's claim of intentional infliction of emotional distress.

III.

For the foregoing reasons, defendants' motion to dismiss, treated as one for summary judgment, is granted, and all

defendants are entitled to judgment in their favor on all claims against them.

/s/ _____
Douglas W. Hillman
Senior District Judge

Dated: June 20,2002